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6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**

8 PETITION TO AMEND RULE 17.1(a)
9 AND ADOPT FORM 28(a) IN RULE
10 41, ARIZONA RULES OF CRIMINAL
11 PROCEDURE

Supreme Court No. R-10-0037

**Comment of the State Bar of
Arizona on Petition to Amend Rule
17.1(a) and Adopt Form 28(a) in
Rule 41, Arizona Rules of Criminal
Procedure**

14 The petition seeks to amend Rule 17.1(a), Ariz. R. Crim. P., to permit a
15 defendant to enter a plea of guilty or no contest by mail in a limited jurisdiction
16 court, under circumstances outlined in the proposed amendment, and to adopt
17 Form 28(a) in conformity therewith.

18 There are instances where individuals are arrested or cited for certain
19 misdemeanor offenses while those individuals are temporarily in Arizona or are
20 otherwise unable, absent hardship, to appear in court to resolve their cases. A
21 primary example would be when an interstate truck driver receives a criminal
22 speeding citation (20-plus miles per hour over the posted speed limit) or other
23 similar victimless criminal misdemeanor offense. To streamline the resolution of
24 cases pending before our already over-burdened courts of limited jurisdiction, the
25 petitioner seeks to modify the rule to permit such cases to be resolved by guilty

1 or no contest pleas through the mail. The rule currently permits similar
2 resolution of cases via telephone.

3 The State Bar of Arizona agrees *in theory* with the proposed modification
4 of the rule. However, the State Bar has concerns surrounding the language and
5 the applicable conditions as proposed. Specifically, the State Bar would strike
6 the word "undue" as it modifies "hardship." No standard currently exists by
7 which a court seeking to invoke the provision could determine that the defendant
8 has made a showing of "undue hardship" as opposed to merely a showing of
9 "hardship." The absence of such a standard invites an arbitrary application of the
10 proposed rule.

11 Additionally, the State Bar would delete the categories set forth in
12 subsections (i) through (iv) of proposed Rule 17.1(a)(4) and would leave
13 category (v) intact. Since each case presents its own unique facts and
14 circumstances, it is the court and the court alone who should determine whether a
15 plea of guilty or no contest should be accepted by mail in any given case. The
16 proposed rule should, in the view of the State Bar, be refashioned in a manner
17 more easily applied.

18 RESPECTFULLY SUBMITTED this 3rd day of May, 2011.

19
20 
21 John A. Furlong
General Counsel

22 Electronic copy filed with the Clerk
23 of the Supreme Court of Arizona
24 this 3rd day of May, 2011,

25 By: Kathleen A. Lundgren

1 A copy was mailed to:
2 Mark Meltzer
3 Committee on Limited Jurisdiction Courts
4 Administrative Office of the Courts
5 1501 West Washington Street, Suite 410
6 Phoenix, Arizona 85007

7 this _____ day of _____, 2011,
8

9 By: _____
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